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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,884	02/13/2002	Thomas Scott Dreaper	4246P2434	3614

7590 05/03/2004  
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EXAMINER

MARKS, CHRISTINA M

ART UNIT	PAPER NUMBER
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3713

13

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,884

Applicant(s)

DREAPER ET AL.

Examiner

C. Marks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 19, 20 and 135-141 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-9, 19-20 and 135-141 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 28 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of claims 1-10, 19-20 and 135-141 via preliminary amendment in Paper No. 7 is acknowledged.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the method of playing a betting game as disclosed in claims 1-10, 19-20 and 135-141 must be shown or the feature(s) canceled from the claim(s). The drawings currently illustrate only structural matter and do not provide proper illustration of the flow required in the method. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Sklar (US Patent No. 6,439,573).

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Sklar discloses a method of playing a betting game by at least one player comprises the steps of using a standard deck that has a mean value equal to a card value equally between the highest and lowest card (Abstract). The player can then bet if they will receive a card value that is at least one of high, low, or equal to the mean (Abstract) as Sklar allows the player to bet high or low.

Regarding claim 8, players are paid the same winnings for both a high and low bet if the bet is correct (FIG 2).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar (US Patent No. 6,439,573) in view of Daines (US Patent No. 6,371,485).

What Sklar discloses above has been discussed and is thereby incorporated herein.

Sklar discloses the deck has 52 cards consisting of four sets of 13 playing cards having a value of two through Ace. However Sklar discloses the middle to be an 8 as Ace is high in the

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disclosed embodiment. Daines also discloses a high low game wherein Aces are low, therefore letting the cards range from (Ace up to a King which is thus a thirteen). Daines also discloses that seven is the mean value. It would have been obvious to one of ordinary skill in the art to use the method of Daines into the system of Sklar. It is known in the art that Aces can be both high and low. One of ordinary skill in the art would be motivated to use an Ace low as it would provide greater clarity to the player, as there is only a single marking on the Ace card, thus indicating its value as a one and in a high low embodiment, cards could thus be quickly compared.

Regarding claim 3, Sklar discloses that only a single card could be provided to the player (FIG 1).

Regarding claims 4-7, Sklar provides for up to eight cards to be distributed to the player wherein the player can bet on the high low characteristics of each card. Sklar does not specifically disclose that each of these cards can be treated as a single value wherein the mean value is adjusted accordingly; however, it would be obvious to a skilled artisan that a multiple of the number of cards would require a multiple of the mean value to keep with the intention of the Sklar disclosure. Otherwise, high low would not be possible. Using a number of cards in a single hand would be obvious to the system of Sklar as it represent a mere mathematical multiplication of the game. Further, by using more than one card instead of a continuous run as disclosed by Sklar, the game would go faster while allowing the player to still wager on a number of cards. This would provide for more games to be played and thus motivation a skilled artisan to do so as it would represent more profit by using a quicker run of games. Essentially, to a skilled artisan using a number of cards with an added value wherein the mean is also added accordingly is just an alternate method of providing multiple cards for a player to bet on

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as disclosed by Sklar and thus would be obvious to such an artisan who would be motivated by the wants and desires required to meet the needs of the system.

Regarding claim 8, players are paid the same winnings for both a high and low bet if the bet is correct (FIG 2).

Claims 9-10, 20 and 140 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar (US Patent No. 6,439,573 in view of Webb (US Publication 2002/0074724).

What Sklar discloses has been discussed above and is incorporated herein.

Sklar lets the player bet on at least one of the card being lower, higher or equal to a certain mean value but the disclosure does not specifically require all three. Sklar does not disclose the player being able to bet on the card being equal to a mean value. Webb discloses a high low embodiment wherein the player can bet, high, low and mid ranges on a number of cards, which teaches that no possibility should be eliminated in a game. Sklar only discloses a player loses when the card is the mean value. By applying the teachings of Webb, a skilled artisan would understand the possibility of an increased revenue for the casino by allowing another facet of betting, thus generating more money and would be motivated to do so. Instead of just applying a null factor to the mean, by applying the teachings of Webb which allow this middle value to be bet upon, a skilled artisan would recognize the number of increased revenue possibilities by allowing further betting opportunities and by this fact, a skilled artisan is always motivated to draw more money into the casino and thus would be motivated to include any opportunity to do so, thus including a bet for the mean value instead of just assigning a null factor to it. Over the long run, the bets collected on the mean value bets would outweigh the limited income gained from collecting bets on the occasions on which the mean does occur. Plus, a skilled artisan further understands that players love betting opportunities and the greater

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available the more drawn they will be. The player would also find the game fairer as they have a small control on the mean value instead of being forced into a loss by the occurrence. At minimum allowing for a draw would increase the player's perception of fairness as is known in the art when the result of a game is not in a winning favor of either the casino or the player. Thus for these reasons, a skilled artisan would be motivated to include this mean betting opportunity not only to increase revenue but also draw more players to the table even furthering revenue. Regarding the payout associated with this incorporation, a skilled artisan also understands the mathematical requirements for a gaming system in terms of probability, thus a bet that is less likely to occur (1 in 13 for the mean value as opposed to 6 in 13 for both the high and the low) would have higher payouts in order to maintain the require percentage of hold.

Claims 135-139 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar (US Patent No. 6,439,573).

What Sklar discloses above has been discussed and is thereby incorporated herein.

Sklar provides for up to eight cards to be distributed to the player wherein the player can bet on the high low characteristics of each card. Sklar does not specifically disclose that each of these cards can be added and thus treated as a single value wherein the mean value is adjusted accordingly; however, it would be obvious to a skilled artisan that a multiple of the number of cards would require a multiple of the mean value to keep with the intention of the Sklar disclosure. Otherwise, high low would not be possible. Using a number of cards in a single hand would be obvious to the system of Sklar as it represent a mere mathematical multiplication of the game. Further, by using more than one card instead of a continuous run as disclosed by Sklar, the game would go faster while allowing the player to still wager on a number of cards. This would provide for more games to be played and thus motivation a skilled

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artisan to do so as it would represent more profit by using a quicker run of games. Essentially, to a skilled artisan using a number of cards with an added value wherein the mean is also added accordingly is just an alternate method of providing multiple cards for a player to bet on as disclosed by Sklar and thus would be obvious to such an artisan who would be motivated by the wants and desires required to meet the needs of the system.

Regarding claim 136, Sklar discloses the deck comprises a standard deck of 52 playing cards (Abstract).

Regarding claim 137, as disclosed above a skilled artisan would understand that a mean must be multiplied by the number of cards used in addition in order to establish the proper relative bounds for a high low game.

Regarding claim 138, Sklar discloses a playing table is used to display the cards (FIG 1).

Regarding claim 139, players are paid the same winnings for both a high and low bet if the bet is correct (FIG 2).

Claim 141 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar (US Patent No. 6,439,573) in view of Kaufman (US Patent No. 6,102,403).

What Sklar discloses has been discussed above and is incorporated herein.

As discussed above it would be obvious to the system of Sklar to use addition of two or more cards in the system wherein the player can already receive more than one card.

Sklar; however, does not disclose a display area for each player and the cards at a particular area are associated only with that player. Kaufman discloses such a setup (FIG 1). Kaufman allows the player to then place one or more bets. It would have been obvious to one of ordinary skill in the art to use separate display areas for each player in order to provide a more clear game. One would be motivated to do so as the player will have a clear understanding of



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what comprises their cards and what comprises the card they are trying to beat. Such a setup would be a construction choice to a skilled artisan as a means to meet the goals and wants for their system. Such a setup would also give the player more of an individualized sense of play since they are on their own cards. Overall, the choice of how to deal the cards and display them would be that of the game constructionist who would be motivated by what they feel is the most optimal setup for their system.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**US Publication No. 2003/0100357:** Game that allows the player to choose whether certain characteristics of a hand will be high or low.

**US Patent No. Re 36,739:** Card game that allows the player to bet on either a high or a low card.

**US Patent No. 5,431,407:** Player has the ability to bet on either high or low of the next card.

**US Patent No. 5,918,884:** Player has the ability to bet on both either high or low for the next card dealt.

**US Patent No. 6,585,588:** Player can play subsequent hands with the dealer wherein each successful high or low bet results in better pay.

**US Patent No. 6,585,267:** High and low gambling game that allows the player to choose card characteristics.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



cmm  
April 29, 2004



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